

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

RAYMOND WALTON,

Plaintiff,

vs.

T. VO, M.D., A. YIN, M.D.,

Defendants.

1:05-cv-00219-AWI-SMS-P

**FINDINGS AND RECOMMENDATIONS  
RE DISMISSAL OF COMPLAINT/  
ACTION** (Doc. 13)

Raymond Walton ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On October 4, 2006, the Court issued an order requiring Plaintiff to either file an Amended Complaint curing the deficiencies identified therein OR otherwise notify the Court in writing of his wish to voluntarily dismiss the case, within thirty (30) days from the date of service of that order. The thirty-day period has passed, and Plaintiff has failed to comply with or otherwise respond to the Court's order.

Local Rule 11-110 provides that "failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all

1 sanctions . . . within the inherent power of the Court.” District  
2 courts have the inherent power to control their dockets and “in the  
3 exercise of that power, they may impose sanctions including, where  
4 appropriate . . . dismissal of a case.” Thompson v. Housing Auth.,  
5 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986). A court may dismiss an action,  
6 with prejudice, based on a party’s failure to prosecute an action,  
7 failure to obey a court order, or failure to comply with local  
8 rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir.  
9 1995) (dismissal for noncompliance with local rule); Ferdik v.  
10 Bonzelet, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for  
11 failure to comply with an order requiring amendment of complaint);  
12 Carey v. King, 856 F.2d 1439, 1440-41 (9<sup>th</sup> Cir. 1988) (dismissal for  
13 failure to comply with local rule requiring pro se plaintiffs to  
14 keep court apprised of address); Malone v. U.S. Postal Service, 833  
15 F.2d 128, 130 (9<sup>th</sup> Cir. 1987) (dismissal for failure to comply with  
16 court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9<sup>th</sup> Cir.  
17 1986) (dismissal for failure to lack of prosecution and failure to  
18 comply with local rules).

19 In determining whether to dismiss an action for lack of  
20 prosecution, failure to obey a court order, or failure to comply  
21 with local rules, the court must consider several factors: (1) the  
22 public’s interest in expeditious resolution of litigation; (2) the  
23 court’s need to manage its docket; (3) the risk of prejudice to the  
24 defendants; (4) the public policy favoring disposition of cases on  
25 their merits; and, (5) the availability of less drastic  
26 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at  
27 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61;  
28 Ghazali, 46 F.3d at 53.

1 In the instant case, the court finds that the public's  
2 interest in expeditiously resolving this litigation and the court's  
3 interest in managing the docket weigh in favor of dismissal. The  
4 third factor, risk of prejudice to defendants, also weighs in favor  
5 of dismissal, since a presumption of injury arises from the  
6 occurrence of unreasonable delay in prosecuting an action.  
7 Anderson v. Air West, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth  
8 factor -- public policy favoring disposition of cases on their  
9 merits -- is greatly outweighed by the factors in favor of  
10 dismissal discussed herein. Finally, a court's warning to a party  
11 that his failure to obey the court's order will result in dismissal  
12 satisfies the "consideration of alternatives" requirement. Ferdik  
13 v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson,  
14 779 F.2d at 1424. The court's order of October 4, 2006, expressly  
15 stated: "Plaintiff is forewarned that his failure to comply with  
16 this Order may result in a Recommendation that the Complaint be  
17 dismissed pursuant to Local Rule 11-110." Thus, Plaintiff had  
18 adequate warning that dismissal of the Complaint could result from  
19 non-compliance with the Court's order.

20 Accordingly, the Court HEREBY RECOMMENDS that the Complaint be  
21 DISMISSED pursuant to Local Rule 11-110, and for Plaintiff's  
22 failure to obey the Court's order of October 4, 2006, failure to  
23 prosecute the action and because the Complaint fails to state a  
24 claim for relief.

25 These Findings and Recommendations are submitted to the United  
26 States District Judge assigned to the case, pursuant to the  
27 provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20) days**  
28 after being served with these Findings and Recommendations,

1 Plaintiff may file written objections with the court. Such a  
2 document should be captioned "Objections to Magistrate Judge's  
3 Findings and Recommendations." Plaintiff is advised that failure  
4 to file objections within the specified time may waive the right to  
5 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
6 (9th Cir. 1991).

7 IT IS SO ORDERED.

8 **Dated: December 12, 2006**  
9 icido3

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE